



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
LAND USE REGULATION PROGRAM
501 E. STATE STREET
P. O. BOX 439
TRENTON, NEW JERSEY 08625-0439
Web Site: www.state.nj.us/dep/landuse

Robert C. Shinn, Jr.
Commissioner

Fax Number
(609) 777-3656

SEP 20 2000

Joseph G. Sweger
New Jersey Department of Transportation
1035 Parkway Avenue, P.O. Box 600
Trenton, New Jersey 08625

RE: Transition Area Waiver-Special Activities
File No.: 1225-00-0011.2
Applicant: New Jersey DOT
Woodbridge Township, Middlesex County

SEP 27 2000

PROJECT NAME
FILE NO.

Dear Mr. Sweger:

This letter is in response to your request for a special activity transition area waiver in accordance with Statewide General Permit No10, which allows minor road crossing fills and expansion of existing road crossing fills including attendant features, both temporary and permanent.

The Land Use Regulation Program has determined that the freshwater wetlands present on or adjacent to the above referenced property are of intermediate resource value. Pursuant to N.J.A.C. 7:7A-6.1, a standard transition area of 50 feet is required adjacent to these wetlands. The submitted plan shows a modification to this standard transition area through the means of a special activity transition area waiver.

Section 7:7A-7.1 of the Freshwater Wetlands Protection Act Rules establishes the framework under which the standard transition area may be modified if the Department determines that the modification will result in minimal environmental impact and that the modified transition area will continue to serve the purposes and functions set forth in N.J.A.C. 7:7A-6.1(a) and (b). In addition, the Department may only grant a transition area waiver if it is determined that no substantial impact will result to the adjacent freshwater wetland (N.J.A.C. 7:7A-7.3(b)).

Based upon a review of the submitted information, the Department has determined that the proposed activity, is consistent with the conditions discussed above. As a result, the Department approves of the proposed modified transition area boundary line as shown on the plan map entitled: "FRESHWATER WETLANDS GENERAL PERMIT PLAN, ROUTES U.S. 1(1953), U.S. 9 (1953), AND U.S. 1 & 9 (1953), CONTRACT NO. 035950170", sheets 8, 9, and 12, dated June 19, 2000, unrevised, and prepared by Frederic R. Harris.

Transition Area Waiver, Special Activities
New Jersey Department of Transportation
1225-00-0011.2

Waiver Conditions

In addition to the standard conditions set forth in section 7:7A-7.3, the following special conditions must be met:

1. The transition area shall not be reduced to less than 8.5 feet in width at any location as shown on the referenced plan.

Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A 13:9B-1 et seq). This determination does not affect your responsibility to obtain any local, State, or Federal permits which may be required.

The freshwater wetlands and waters boundary line(s) and the transition area boundary line, as determined in this letter, must be shown on any future site development plans. The line(s) should be labeled with the above LURP file number and the following note:

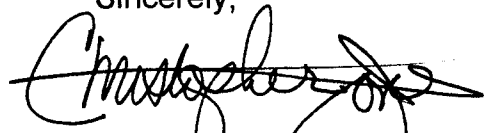
"Freshwater Wetlands/Waters Boundary Line and Transition Area Boundary Line as approved by NJDEP"

Appeal of Decision

In accordance with N.J.A.C. 7:7A-12.7, any person who is aggrieved by this decision may request a hearing within 30 days of the decision date by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, PO Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist.

If you have any questions regarding this letter, please contact Katrina Wessling of my staff at (609) 633-6754. Be sure to indicate the Program's file number in any communication.

Sincerely,



Christopher Jones, Section Chief
Bureau of Inland Regulation

/sm

c: Woodbridge Township Clerk
Woodbridge Township Construction Official

A:/Dep(C)Smfw0912

Prepared by:

NJDEP

File No. _____

DECLARATION OF RESTRICTION FOR MODIFIED TRANSITION AREA

THE DECLARATION of Deed Restriction is made this _____ day of _____, 199_, by _____, having an office at or residing at _____ hereinafter referred to as "Declarant."

W I T N E S S E T H

WHEREAS, the Declarant is the owner of certain real property located in the Township of _____, _____ County, New Jersey, designated as Lot _____, Block _____, on the official Tax Map of the Township of _____ (hereinafter "the Property"); and

Whereas, wetlands play a significant role in the maintenance of environmental quality on a community, regional, and statewide level; and

Whereas, wetlands transition areas are integral portions of a freshwater wetlands ecosystem; and

WHEREAS, the Declarant has obtained a Freshwater Wetlands transition area waiver ("TA waiver"), # _____ - _____ - _____, which establishes a modified transition area from the New Jersey Department of Environmental Protection ("DEP") pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; and

WHEREAS, the TA Waiver issued to the declarant is conditioned upon the Declarant's recording of a Department approved deed restriction, pursuant to N.J.A.C. 7:7A-7.1(g), for the modified transition area more particularly described on attachment A (hereinafter meets and bounds description of the "Modified Transition Area"), and upon the imposition by the declarant of a deed restriction to preclude subsequent development of the Modified Transition Area without prior Department approval as outlined below; and

WHEREAS, the Declarant desires and intends to restrict subsequent development of the Modified Transition Area in accordance with the covenants, conditions, and restrictions set forth herein;

NOW THEREFORE, in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq., and associated regulations, N.J.A.C. 7:7A-1, the declarant, for itself, its successors and assigns, hereby covenants and agrees with the State of New Jersey, Department of Environmental Protection that the modified transition area is hereby made and declares to be subject in perpetuity to the following covenants and restrictions:

1. The following activities shall not occur within the Modified Transition Area, unless the Department makes the findings specified below.

1. Removal, excavation, or disturbance of the soil;
2. Dumping or filling with any materials
3. Erection of structures
4. Placement of pavements; and
5. Destruction of plant life which would alter the existing pattern of vegetation.
6. Any other activities constituting a prohibited activity under N.J.A.C. 7:7A-6.2, as amended

2. These activities shall only occur if the Department finds:

(a) There is compelling public need for the activity greater than the need to protect the modified transition area;

(b) That the activity has no practicable alternative which would;

i. Not involve a transition area;

ii. Involve a transition area but would have less adverse impact on the transition area and the adjacent wetland; and

iii. Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal.

_____ Township, _____ County

3. The covenants restrictions set forth herein shall run with the land and be binding in perpetuity upon the Declarant, its successors and assigns, in perpetuity, and all parties having or acquiring any right, title or interest in the property or any part thereof. Notice of this deed restriction shall be given to all holders of any easements in the Modified Transition Area by the Declarant within 30 days of recording by the County Clerk.

4. It is the purpose of the Declaration to assure that the modified transition area will be maintained as such and to prevent any disturbance or development of the property. To carry out this purpose, the following rights are granted to the State of New Jersey, Department of Environmental Protection, by this Declaration:

(a) To ensure upon the property in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restrictions.

(b) In addition to the exercise of any other statutory or common law right, to enjoin any activity on, or use of, the property that is inconsistent with the purpose of these conservation restrictions and to enforce the restoration of such areas or features of the property that may be damaged by inconsistent activity or use.

5. The Declarant intends that enforcement of the terms and provisions of the deed restriction shall be at the discretion of the State of New Jersey and that any forbearance on behalf of the State of New Jersey to exercise its rights hereunder in the event of any breach hereof by the Declarant, its successors or assigns, shall not be deemed or construed to be a waiver of the State's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of breaches of the restriction, condition or covenant which occur, or the length of time it remains unenforced.

6. The Declarant reserves to itself, its successors or assigns, all rights as to owners of the property, including the right to engage in all uses of the property not inconsistent with the purpose of these restrictions and the right to the property in accordance with N.J.A.C. 7:7A-6.2(b).

7. No additional right of access by the general public to any portion of the property is conveyed by this instrument.

Transition Area (Project Name)

____ Township, _____ County

8. The Declarant agrees to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the property. The Declarant shall be responsible for acts of its own negligence consistent with the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq.

9. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest.

10. The Declarant agrees that the terms, conditions, restrictions and purposes of this instrument will be inserted in any subsequent deed, lease, sub-lease or other legal instrument by which the Declarant divests itself of any interest in the property.

11. The NJDEP agrees that it will assign its rights under this instrument only to another governmental body or a charitable conservancy, and only in accordance with N.J.S.A. 13:8B-1 et seq. and N.J.S.A. 13:9B-1 et seq.

12. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the NJDEP, its successor or assign.

13. If any provision of this Declaration or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

TO HAVE AND TO HOLD unto the New Jersey Department of Environmental Protection, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this declaration shall not only be binding upon the Declarant but also upon its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the property.

